

**BEFORE THE HEARING PANEL EMPOWERED BY THE STATE BOARD OF
EDUCATION PURSUANT TO SECTION 162.961 RSMo.**

,)	
by his parent, ,)	
)	
Complainants,)	
)	
v.)	
)	
COLUMBIA 93 SCHOOL DISTRICT,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

The Hearing Panel, after hearing the evidence in this matter on February 19-21; April 15-17 and May 23-24, 2002, makes the following Findings of Fact and Conclusions of Law and issues the following Decision and Order:

FINDINGS OF FACT

I. PARTIES

1. The Parent has been a resident of, and domiciled within the boundaries of the Columbia 93 School District (“the District”) during all times relevant to this due process proceeding. Student resided with Parent until April 2002 when he was taken into custody of the Missouri Division of Youth Services and was no longer in the District.
2. Student’s Parent represented herself. Her advocate, Mrs. Rhonda McMillen, was present at the hearing.
3. The District is a Missouri school district organized pursuant to Section 162.461 *et seq.* RSMo.

4. Counsel for the District is Cathy J. Dean of the Polsinelli Shalton & Welte law firm, 700 West 47th Street, Suite 1000, Kansas City, Missouri 64112.

5. The Hearing Panel members in this proceeding are:

Pamela S. Wright, Chairperson

Dr. Terry Allee, Hearing Panel Member

Pam Walls, Hearing Panel Member

II. TIMELINE INFORMATION AND PROCEDURAL HISTORY

6. Parent sent a letter to the District on November 6, 2001, stating that she was submitting a formal due process request to address her son's IEP.

7. The Missouri Department of Elementary and Secondary Education ("DESE") received a copy of this letter on November 7, 2001.

8. DESE calculated the initial timeline for the issuance of an opinion to be December 24, 2001. On December 19, 2001, the parties requested an extension of the timeline to March 22, 2002, with hearing dates of February 19-21, 2002. On March 2, 2002, Parent requested an extension of the timeline to May 1, 2002, with additional days of hearing on April 15-17, 2002. At the conclusion of the hearing on April 17, 2002, the parties agreed to two more days of hearing on May 23-24, 2002, with the timeline extended from May 1, 2002 until July 1, 2002. At the conclusion of the hearing on May 24, 2002, the parties agreed to an extension of the timeline to July 15, 2002. The Hearing Panel issues its opinion within the new deadline.

9. On December 18, 2001, the District filed its Motion for Protective Order to Compel Complainants to Return Certain Documents. Parent complied with this request without the need for an Order directing her to do so. Thereafter, the District served

certain health care providers for Student with subpoenas to attend records depositions on January 17, 2002. The health care providers filed Motions to Quash because they had received no consent forms signed by Parent. On January 16, 2002, the Chairperson entered an Order granting the Motions to Quash.

10. The parties exchanged exhibits more than five business days in advance of the hearing and reached a Stipulation of Facts.

11. On February 15, 2002, the District filed a Motion to Clarify Issues and to Dismiss Certain Issues. The Motion was sustained in part and overruled in part as noted in the transcript Volume I, pages 4-20.

12. On April 16, 2002 after Parent concluded her case, the District moved for a directed verdict which was denied by the Hearing Panel on the same day. T. Vol V, 1465.

13. The Hearing Panel held eight days of hearing over a four month period. Seventeen witnesses testified and the parties submitted voluminous exhibits. The hearing transcript exceeds two thousand pages. Each party has filed detailed Proposed Findings of Fact and Conclusions of Law, including nearly 500 Findings of Fact submitted by Parent.

III. ISSUES OF THE DUE PROCESS PROCEEDING

14. Parent submitted the following issues to be resolved by the Hearing Panel:

A. Was the reevaluation process of Student in 2000-2001, including the testing, performed in compliance with the Individuals with Disabilities Act (IDEA) and state standards?

B. Were Student's IEPs (dated November 30, 1999; April 20, 2001 and November 6, 2001) designed and implemented for Student to receive educational benefit?

C. Were Student's IEPs appropriately implemented so that sufficient services, accommodations and support were provided for Student to be successful in his least restrictive environment?

D. Were there procedural violations of state standards and the IDEA:

(i) When Student's IEPs were developed?

(ii) When placement decisions were made with regard to Student's least restrictive environment?

(iii) When the District identified Student's preferences, interest and needs, so that these preferences were identified at age 14 or younger and placed in Student's IEP and so that a final transition plan was in place no later than age 16?

E. If there were procedural violations, did the violations cause Student to be denied a free appropriate public education ("FAPE") under IDEA?

F. If there were violations of the state standards and IDEA by the District, what remedies should be awarded to Parent and Student?

FACTS

Family Background

- 15. Student was born on _____. Exhibit 1, CPS5-000039.**
- 16. Student was abused by his stepfather for a period of years. Exhibit 6, CPS6-000044-47.**
- 17. Parent knew that her spouse was abusing student. Exhibit 6, CPS6-000044-.**

18. In 1998, while living in Lebanon, Missouri, Student's sister attempted suicide because of three attempted rapes by Student's stepfather who had been sexually molesting the sister since she was years old. T. Vol. II, 437-38 (A.).

19. Upon learning of the attempted rape of her daughter, Parent took Student and his sister to a shelter and all three of them began intensive individual and family counseling. T. Vol. II, 438 (A.).

20. Parent moved with her children to Columbia, Missouri in December 1998. T. Vol. II, 439 (A.).

21. Before moving to Columbia Parent arranged for continued individual and group counseling for herself, her daughter and Student. T. Vol. IV, 1052 (A.).

22. Student transferred to the District from Lebanon Junior High School in January 1999. T. Vol. II, 439 (A.). Exhibit 15, CPS5-000037-38. For the second semester of seventh grade of the 1998-1999 school year, Student attended Smithton Middle School. T. Vol. II, 439 (A.).

West Junior High 1999 – 2000 (Eighth Grade)

23. On September 1, 1999 Student was initially referred for evaluation. Exhibit 30, CPS5-000282.

24. Parent signed a Notice and Consent for Initial Evaluation on September 27, 1999. Exhibit 34, CPS5-000320-321.

25. The District and Parent participated in preparing an evaluation plan, including a description of areas to be assessed and known tests to be used. Exhibit 34, CPS5-000321.

26. The evaluation team conducted an initial evaluation of Student and developed an extensive Diagnostic Summary of Student on November 10, 1999, including the determination of an average to low average IQ of 95. Exhibit 295, CPS5-000287-000318.

27. The following deficit areas were identified in Student's Diagnostic Summary: staying on task; completing tasks independently; math calculations; misinterpreting information and directions; inconsistent skill and concept retention; difficulty following school and classroom rules; and expectations for behavior. The only areas of strengths in the deficits : can maintain attention to task in one-on-one situations and in math reasoning. Exhibit 295, CPS5-000316.

28. Student's Diagnostic Summary further states that Student has a medically confirmed diagnosis of Attention Deficit Disorder which results in an educational problem caused by this impairment which interferes with his ability to function in an educational program using traditional instructional materials and technique. Exhibit 295, CPS5-000317.

29. Parent received a Notice of Individual Education Program Conference on November 18, 1999. Exhibit 43, CPS5-000258.

30. Student's initial IEP was developed by the IEP Team at the November 30, 1999 IEP Meeting. Exhibit 49, CPS5-000239-000261.

31. Parent was present and participated in the November 30, 1999 IEP Meeting. Exhibit 49, CPS5-000239.

32. Student was placed in modified regular education with no related services provided. The special education services included 250 minutes per week in an academic lab. Regular education minutes per week totaled 1625. Exhibit 48, CA1-00696; Exhibit 49, CPS5-000239-000263; T. Vol. VI, 1596 (G. Crowley).

33. Parent consented to the Initial Placement and the educational diagnosis of Other Health Impaired. Exhibit 48, CPS5-000236.

34. The November 30, 1999 addressed Transition on page 12. The IEP team concluded that Student did not currently have transition service needs that could not be met through typical 8th and 9th grade experiences in the classroom, as well as guidance office planned and directed activities. Exhibit 49, CPS5-000250.

35. The day after the IEP was developed, Student's learning specialist provided copies of the IEP to each of Student's teachers. T. Vol. I, 189 (K. O'Laughlin).

36. The learning specialist also reviewed Student's IEP, discussed Student's progress with Student's teachers, and met with Student during academic lab to assist Student with his IEP goals and objectives. T. Vol. I, 190-91 (K. O'Laughlin).

37. Student's IEP Team developed a Behavior Intervention Plan to address the discipline problems Student was having at West. T. Vol. I, 211 (K. O'Laughlin). Student's learning specialist assisted in implementing the plan with Student. T. Vol. I, 197 (K. O'Laughlin).

38. Parent in November 1999 reported Student to Juvenile Office for her concerns about Student's behavior in school, home and community. T. Vol II, 474-475 (A.).

39. In December 1999, Parent, Student and sibling started participating in a Families First Program through the Mid-Missouri Mental Health Center. This is a crisis intervention program, more specifically in this situation to keep Student from being hospitalized. Exhibit O; T. Vol. II, 463-468 (A.).

40. Parent received a report dated February 2, 2000 regarding Student's progress on his IEP goals during Student's eighth grade year. Exhibit 54, CPS5-000238.

41. While the November 30, 1999 IEP shows that an assessment was made on May 31, 2000 regarding Student's progress on his IEP goals, there is no record that the District sent Parent a report on same. Annual Program Notes and Contact Log do not reflect a report was sent in the Second Semester at West other than the February 2, 2000 report. Exhibit 54, CPS5-000252.

42. The District sent Parent report cards on a quarterly (nine weeks) basis, with progress reports provided halfway between each quarter. T. Vol. I, 242 (K. O'Laughlin).

43. Student's grades for the First Semester at West were: D-'s in Intermediate Math and Social Studies; D in Teen Living; F's in English and Science and B- in PE. His grades for the Second Semester were: F's in English and Math; D+ in Social Studies; D in Teen Living; D- in Science and an A in PE. Exhibit 279, CPS5-00020.

44. Student's poor grades at West were due largely to Student's failure to complete his homework or perform his work outside of school. T. Vol. I, 201 (K. O'Laughlin).

45. On June 5, 2000 Parent was advised that because of Student's low grades he was in danger of repeating the eighth grade. Exhibit 57, CPS5-000049. Student went to summer school in 2000. His grades were a C in English, a C in Math, and a D in Science. Exhibit K3, CA1-00119. As a consequence he was not required to repeat the eighth grade.

46. K. O'Laughlin, Case Manager for Student, worked very closely with Student: in Academic Lab where she helped monitor his progress on homework; as his special education teacher in one of his two CWC classes; she observed him in other classes and talked with his teachers on a regular basis. She had no strong concerns regarding his classroom behavior. The Behavior Intervention Plan was helpful to Student in reaching his goals on IEP. She observed Student knew how to act appropriately but sometimes acted inappropriately to

impress other students. By the end of the school year, fewer prompts were needed to redirect his behavior. T. Vol. I, 190-198.

47. He became a ward of the court in June 2000 after a series of misconduct occurring at school and in the community: stealing a watch from another student; pulling the fire alarm at school; breaking windows at the University; grabbed a student getting off a school bus and threw her to the ground. T. Vol. II, 446-448 (A.).

Douglas High School 2000 – 2001 (Ninth Grade)

48. The District addresses transition in its general curriculum. Because students begin high school in the ninth grade, guidance counselors work with all eighth grade students discussing how to plan for high school graduation and for post-secondary school or work. T. Vol. I, 269-70 (E. Carter).

49. The District conducts pre-registration for the next school year in February of each school year. T. Vol. I, 269-70 (E. Carter).

50. In preparation for pre-registration, the guidance counselor at West suggested that Student might want to apply to attend Douglass High School. T. Vol. I, 171 (K. O’Laughlin).

51. Douglass High School is an alternative high school for students who are more multi-modal learners and who struggle in traditional school settings. T. Vol. II, 176 (K. O’Laughlin). Multi-modal instruction involves learning through various senses and avenues of approach. For example, a government class might be taught by allowing students to play specific government roles like judges and lawmakers. T. Vol. VI, 1565-66 (G. Crowley).

52. The goal at Douglass is to take students from various backgrounds and assist those students in finding an educational track that will help them succeed. T. Vol. VII, 1956-57 (J. Shackelford).

53. Douglass has a student population of approximately 200 students in comparison to West Junior High School with total enrollment of 950-1000 students. T. Vol I, 246 (E. Carter).

54. The majority of students at Douglass do not have behavior problems. T. Vol I, 247 (E. Carter).

55. Douglass has no more special education students than the other high schools in the District. T. Vol. V, 1564 (G. Crowley).

56. Students are not assigned to Douglass High School. Students must apply to attend and frequently there is a waiting list to attend Douglass. T. Vol. II, 174 (K. O’Laughlin).

57. Student and Parent signed the application for Student to attend Douglass. T. Vol. II, 443 (A.). Student wanted a fresh start, something new. T. Vol I, 247 (E. Carter); T. Vol IV, 1063 (A.). Student was interviewed and, at first, he was not accepted as a student at Douglass. T. Vol. II, 443 (A.).

58. Student called the school and requested a second interview. T. Vol. II, 443 (A.). After the second interview Student was accepted to attend Douglass for the 2000 – 2001 school year. T. Vol. II, 443 (A.).

59. While Student’s schedule changed when he moved from West to Douglass, Student was enrolled in the Douglass screen print program and his educational placement continued to be modified regular education. T. Vol. VI, 1567-68 (G. Crowley).

60. The services provided in Student's Modified Regular Education program changed from 250 minutes per week in Academic Lab to 30 minutes consult. Additionally, he no longer had CWC classes. Exhibit 49, CPS-000241.

61. While the District sent a Notice of Change in Services, subtitled Grade Level Transition, to Parent on or about August 23,2000, no IEP meeting was convened to discuss same.

62. The class size at Douglass is generally eight to nine students. T. Vol. VII, 1947 (J. Shackelford).

63. At Douglass, students often work in small groups consisting of two to three students. T. Vol. VII, 1947 (J. Shackelford).

64. While at Douglass, the majority of time Student was on task and capable of completing the work assigned to him. T. Vol. VII, 1952-53 (J. Shackelford).

65. Mr. Shackelford, one of Student's teachers at Douglass, was recruited to teach at the alternative school because he graduated from an alternative high-school, he could be a good male role model and he had experience working with children who had severe behavior disorders. Exhibit G4, CA 1-00124.

66. Douglass had an after-school study session for students who were off task in the classroom. T. Vol. VII, 1975-76 (J. Barber).

67. Parent withdrew her consent for Student to attend the after school sessions because she thought it was punishment for his disability.. T. Vol. VII, 1976 (J. Barber).

68. Student's teachers at Douglass overall comments regarding Student's conduct: respectful to teachers, administrators and peers; not disruptive; generally not a discipline problem; did not see him as explosive or out of control; most of the time he behaved

appropriately. T. Vol. VI, 1574, 1580-1581 (G. Crowley); T. Vol. VII, 1945-1947 (J. Shackelford); 1962-1966 (J. Barber); 1986-1990 (T. Alexander).

69. Gail Crowley, who has a Master's Degree and Missouri certifications in regular education and special education, served as Case Manager for Student while attending Douglass. She taught Student Language Arts and History. She's both special and general education teacher in those classes which worked well so students would not know who was under an IEP. Ms. Crowley had responsibility for ensuring the implementation of the IEP by the other teachers, with whom she met on a weekly, and sometimes daily, basis. She also followed and implemented the Behavior Intervention Plan included with the Student's IEP although she did not observe the behavior problems mentioned in Student's plan. T.Vol.VI, 1562-1565; 1578 (G. Crowley).

70. Gail Crowley used a time out plan which involved the misbehaving student being sent to the hallway where there was a table with forms to be completed by the student. Students were to describe what they should have done or what they could have done better. The students would then take the form to the Home School Communicator who would review it. Basically, the system was designed to give the misbehaving student time to rethink and refocus. T.Vol.VI, 1581-1582. (G. Crowley).

71. Douglass has a reward system which encourages students to earn auction points by behaving appropriately; being on time; being prepared for class and working productively. At the end of the school year, a student uses accumulated points to bid on donated items.¹

¹Unfortunately, because of Student's misconduct and resulting confinement at JJC and Pathways discussed infra, Student was unable to participate in this auction at the end of the school year.

Points can also be used to “purchase” earned study breaks. T. Vol. VI, 1574-1576 (G. Crowley).

72. Gail Crowley also has a reward system involving the use of poker chips to earn extra grade points for positive accomplishments. Student earned chips, e.g., working well with peers. She also has a checkbook award system whereby a student could earn points to select items from a goodie box . If a student gets 100 points on a test, she will bake whatever the student’s wants. T. Vol. VI, 151578-1580 (G. Crowley).

73. Parent was notified in November 2000 that Student’s IEP Team would meet to conduct the annual review of Student’s IEP. T. Vol. II, 359 (L. Tanner Jones).

74. Also in November 2000, Student’s Parent found a list that was written by Student. Stipulation of Facts at ¶ 1. The list was of people he wanted to kill when he turned 18. Id. The list included students at Douglass High School and his adopted father. Id. Student’s Parent reported her finding the list to Student’s juvenile officer, his counselor, and to Douglass High School. Id.

75. From November 7, 2000 through November 14, 2000 Student was treated at the Spirit of St. Louis Hospital, a psychiatric hospital in St. Charles, Missouri. Stipulation of Facts at ¶ 2.

76. Student returned to school on November 20, 2000. Stipulation of Facts at ¶ 4.

77. Student was diagnosed with Bipolar-II (rapid cycling) Disorder in November 2000. Exhibit 63, CPS5-000415-417.

78. Student was also diagnosed with Post Traumatic Stress Disorder (PTSD) associated with physical abuse. Exhibit 63, CPS5-000415-417.

79. Parent signed a release and allowed Student’s teachers and doctors to exchange

information about Student. Exhibit 84, CPS-000420.

80. Student's case manager spoke with Student's doctor on two occasions and shared

what she learned from the doctor with Student's other teachers. Crowley was very surprised by the diagnosis because she had not seen the mood swings or peaks and valleys in his behavior. Other teachers and the Douglas counselor expressed the same opinion regarding the bi-polar diagnosis to Gail Crowley. T. Vol. V, 1591-94 (G. Crowley).

81. The November 2000 IEP Meeting was rescheduled upon the request of Parent. T. Vol. II, 360 (L. Tanner Jones). Exhibit 71, CPS5-000234.

82. Student's Annual Goals 1-3 on the November 30, 1999 IEP were reviewed by Gail Crowley on October 21, 2000 and December 4, 2000 and concluded that two of three were Emerging. Exhibit 49, CPS-000244-246.

83. The District sent Parent a Notice of Individual Education Program Conference on December 11, 2000, notifying her that an IEP Meeting was rescheduled for December 18, 2000. Exhibit 75, CPS5-00232.

84. The purpose of the December 18, 2000, meeting was to develop a new IEP and to review and revise the goals and objectives of Student's present IEP Plan as well as to develop a Transition Plan. Exhibit 71, CPS5-000234.

85. At the December 18, 2000 meeting a new IEP was not completed. Because of Student's recent medical diagnosis resulting from his psychiatric hospitalization, Parent wanted Student reevaluated. T. Vol. II, 451 (A.). The team agreed to continue the current IEP while Student was reevaluated.

86 The team met again on January 3, 2001 and notice was provided for this meeting. Exhibits 75 and 76, CPS5-000232 - 000233.

87 Parent received a Notice of Reevaluation and consented to the reevaluation on January 3, 2001. Exhibit 83, CPS5-000229-231.

88 Student's IEP Team determined that Student's Initial IEP developed in November 1999 would remain in effect until the IEP Team completed the Reevaluation Process and completed a new IEP. T. Vol. II, 358 (L. Tanner Jones). It was understood that following the Reevaluation Process, the IEP Team would develop a new IEP for Student based upon the Reevaluation results. T. Vol. II, 357-58 (L. Tanner Jones); T. Vol. V, 1474 (C. Parks).

89 On February 16, 2001, Student was placed in the Juvenile Justice Center ("JJC") because he tested positive for marijuana. T. Vol. I, 454 (A.).

90 Student was released from JJC on April 2, 2001. T. Vol. I, 453-454 (A.).

91 One condition for Student's release from JJC was that he participate in a day treatment program at Pathways. Stipulation of Facts at ¶ 6. Student was in Pathway from April 3, 2001 to June 25, 2001. Stipulation of Facts at ¶ 7.

92 The team completed an extensive Reevaluation of Student on March 15, 2001. Exhibit 122, CPS5-000170-000219.

93 Parent requested an independent psychological/educational evaluation. The evaluation was performed at public expense on July 24, 2001. Stipulation of Facts at ¶ 9.

94 The Reevaluation process took many meetings to finish, partly because Parent requested that additional tests and evaluations be conducted. T. Vol. II, 340 (L. Tanner Jones).

95 The process also took longer because, while team members presented information, Parent and her advocate would speak among themselves and would not hear what was being presented.² T. Vol. V, 1478-79 (C. Parks). It also took longer because Parent and her advocate were unwilling to start where the team left off at the previous meeting. Instead, they wanted to reconsider previous decisions.³ T. Vol. V, 1478 (C. Parks). The District started videotaping Student's IEP meetings for two reasons: to cut down on the rudeness and to have an accurate record of what transpired. T. Vol. V, 1482-1483 (C. Parks).

Homebound 4/01 – 8/01 (Ninth Grade)

96 On April 3, 2001 Student began the Pathways' program and continued at that program until June 25, 2001. Stipulation of Facts at ¶ 7.

97 Parent and District personnel had several meetings to reevaluate Student and to develop the April 20, 2001 IEP. Stipulation of Facts at ¶ 8.

²The Chairperson of the Hearing Panel on more than one occasion had to direct the Parent and her advocate to stop talking with each other during the hearing because it was very distracting. T. Vol. VI, 1561.

³The District conducted an analysis of all IEP meetings over the previous 18 months to determine whether the presence of the same advocate at IEP meetings for other students had a similar impact on the length of the meetings. The District has approximately 2700 students with IEPs. Of those students, 16 required more than two IEP meetings. Parent's advocate in this case was a participant in over half of those meetings. T. Vol.V, 1519 (Parks).

98 The IEP Team completed Student's Annual Review of his November 1999 IEP on April 20, 2001, following the Reevaluation Process requested by Parent. Exhibit 131, CPS5-000120-000142.

99 The IEP team used the information from the Spirit of St. Louis Discharge Summary in the development of the April 20, 2001 IEP.⁴ T. Vol. V, 1502-1503 (C. Parks).

100 Upon completion of extensive testing, the IEP team concluded that Student did not have a learning disability. T. Vol II, 369, 414 (L. Tanner Jones).

101 Student's April 20, 2001 IEP Program listed the special education services and related services Student was to receive as homebound ten hours per week. Exhibit 131, CPS5-000121.

102 Student's April 20, 2001 IEP included a transition program and transition goals. More specifically, the IEP provided that his transition service needs lie in the area of career/employment exploration, task completion, problem solving skills and expressing needs. His career course considerations to support his interests for 9th grade would include computer software. Exhibit 131, CPS5-000128-000129.

103 The IEP team also addressed transition issues in the third annual goal of the April 20, 2002 IEP. This goal provided that he will participate in 3 career exploration activities. The short-term objectives included: visit/tour at least one post-secondary institution by November 2000; complete all requirements for the participate in a "job shadowing" experience in the second semester; and Student will work with Parent or sign up to work with

⁴Gail Crowley, who had spoken twice with Student's doctor at Spirit of St. Louis Hospital, was Case Manager for Student and attended the meetings held to develop the April 20, 2001 IEP. Exhibit 131, CPS5-000120; Findings of Fact #80.

the school counselor to explore ECOS (a new Internet-based career counseling tool) for a minimum total time of 90 minutes.⁵ Exhibit 131, CPS5-000128-000126.

104 Parent was permitted to express her views and opinions during all of the IEP meetings, and the team did not ignore her input. In fact, they took her concerns into consideration in developing the April 20, 2001 IEP. T. Vol. II, 369 (L. Tanner Jones).

105 The April 20, 2001 IEP included a diagnosis of Other Health Impaired to encompass

his medical diagnoses of bipolar and post-traumatic stress disorder as well as his ADHD symptoms, which were being seen in school. T. Vol. II, 370-371 (L. Tanner Jones).

106 The new IEP team concluded that behavior should be addressed as a goal (i.e., task completion) but a Behavior Improvement Plan was not needed at that time. CPS5-000128-000131.

107 Student's new IEP indicated that homebound placement was appropriate for Student at that time. T. Vol. II, 373-74 (L. Tanner Jones).

108 The IEP Team's decision to place Student in homebound instruction was based on a recommendation Student's doctors and on Student's confinement at either the JJC or Pathways during the time the IEP was developed so attendance at school during the day was not available to Student. T. Vol. II, 419 (A.); T. Vol. V, 1481 (C. Parks).

109 Student relapsed on May 16, 2001 when he sneaked out of the house to join two other teenagers (friends from Pathways) who had stolen a car. Student also got caught smoking pot. T. Vol II, 477 (A.).

⁵Parent was provided information regarding the Educational and Career Opportunity System ("ECOS") program for the District's students. T. Vol. III, 534-535 (K. Prude).

110 JJC and Pathways, in response, recommended inpatient care at Rolla, which Parent successfully opposed. T. Vol. II, 478-480 (A.)

111 Student received homebound services throughout the Summer of 2001. Stipulation of Facts at ¶ 12.

112 Student was successful in homebound placement receiving two A's and one B. Exhibit 135, CPS5-000017. At the end of Student's freshman year in high school he had completed sufficient credits to be classified as a sophomore and was on track to graduate T. Vol. III, 660 (K. Pride).

Hickman High School 2001 – 2002 (Tenth Grade)

113 Parent requested that Student be enrolled at Hickman High School ("HHS") for the 2001-2002 school year. Stipulation of Facts at ¶ 14. Parent request for Student to attend HHS was consistent with the April 20, 2001 IEP, which indicated Student's desire to attend a traditional high school. Exhibit 131, CPS5-000120-140.

114 The independent evaluation, which was requested by Parent, was completed in July by Dr. Farmer. T. Vol. IV, 918 (J. Farmer). In 1991 Dr. Farmer earned her Ph.D. in Clinical Psychology with a focus on children from the University of Missouri-Columbia, where she now serves as an Associate Professor in the Department of Health Psychology. T. Vol. IV, 915-916 (J. Farmer). Dr. Farmer testified her test results were in line with previous testing, including no learning disability according to standard IDEA testing. T. Vol. IV, 980-981 (J. Farmer).

115 Dr. Farmer stressed that Student's behavioral and emotional needs required a very high level of structure and support. T. Vol. IV, 926 (J. Farmer). It was also important that those accommodations be routine and structured. *Id.*, 927. Dr. Farmer also testified that

scheduling an academic lab in the morning and late in the school day was a very nice support for Student. *Id.*, 986. Among her other recommendations were that an adult mentor be assigned to Student. *Id.*, 978.

116 Dr. Farmer also recognized that there is a point where a school can put in only so many supports and then responsibility must shift to the student to take advantage of the help offered. T. Vol. IV, 952-956 (J. Farmer).

117 Dr. Farmer underscored that the use of drugs and alcohol by Student with his bipolar disorder would exacerbate the difficulties the District and family would have with him. T. Vol. IV, 979-980 (J. Farmer).

118 Dr. Farmer further stated the need for the parent to sign a consent form so that a district can get records for a student who has just been released from a hospital. T. Vol. IV, 988 (J. Farmer).

119 Dr. Carol Parks attended the staffing at which Dr. Farmer's report was presented. T. Vol. V, 1485 (C. Parks). When Dr. Parks returned from the staffing, she recommended that Kelly Prude be the adult mentor for Student. T. Vol. V, 1520 (C. Parks).

120 The IEP Team, including Parent and Student, met on August 28, 2001, the same day Parent was given Notice of the Conference.⁶ Exhibit 148, CPS5-000115.

121 At the August 28, 2001 IEP meeting, Parent provided the IEP Team with additional parental input to be included in Student's present level performance. Stipulation of

⁶At some point in the 2001-2002 school year, Student stopped attending IEP meetings because of the constant arguing by the IEP team. Student's Depo., at 31, lines 16-25.

Even though Parent received Notice on the same date, she had previously requested an IEP to discuss a Change of Placement, inter alia, in an August 16, 2001 letter to Mrs. Thornburg at HHS. Exhibit 143, CPS 000730. Thus, it would appear that the August 28, 2001 meeting was likely set up by telephoning Parent to accommodate her schedule.

Facts at ¶ 15. 122 At the August 28, 2001 meeting, Student’s IEP Team reviewed Student’s present level and Student’s goals and benchmarks to create “an IEP that best supported [Student] in the setting he was in.” T. Vol. III, 580-81 (K. Prude).

123 The LEA at the August 28, 2001 meeting thought that Student should attend school for only half-days, for a more gradual transition from homebound to school. T. Vol. VI, 1711 (J. Paulsen). However, he was convinced by the Parent and the other team members that they could put sufficient supports in place for Student to be successful as a full-time student. T. Vol. VI, 1712 (J. Paulson).

124 At the August 28, 2001 IEP Meeting, Student’s IEP Team decided to change Student’s placement from homebound instruction 10 hours per week to placement at Hickman High School. T. Vol. III, 579 (K. Prude). The IEP Team also changed Student’s weekly education minutes from 500 to 1,125, and listed CWC classes, special education classes, academic lab, and intermediate math. T. Vol. III, 579 (K. Prude).

125 There were two classes Parent wanted him to take: Small Gas Engines and the Success Center. T. Vol. II, 485, 487 (A.).

126 At the August 28, 2001 IEP meeting, Student also expressed a strong preference to be at Hickman rather than returning to Douglass or having Homebound Instruction. Student Depo., at 10, lines 18-25.

127 On August 29, 2001, Student completed a Personal Data sheet for HHS wherein he expressed an interest in customizing cars and truck bodies & engines. Exhibit 150, CPS 5-000025.

128 In Student’s Functional Behavior Assessment it was determined that Student performed better in areas where he had high interest. T. Vol. V, 1421 (R. Trussell.) Parent

reported that he was very interested in taking Small Gas Engines. T. Vol. II, 489-85 (A.). Accordingly, that elective was included in his schedule and a vocational resource educator (VRE) was assigned to assist Student in his Small Gas Engines class. T. Vol. VI, 1739 (J. Paulsen).

129 Student was placed in Small Gas Engines but not the Success Center. T. Vol. VI, 1736, 1738 (J. Paulsen). Success Center is comparable to academic lab but it is a two-hour class.⁷ T. Vol. VI, 1735-36 (J. Paulsen). The team determined that an academic lab at the end of the morning and another academic lab at the end of the day was better for Student than a two-hour academic lab. T. Vol. VI, 1737 (J. Paulsen). Dr. Farmer agreed with that reasoning. T. Vol. IV, 935-936 (J. Farmer).

130 Student's IEP Team developed several accommodations for Student, to ensure a successful transition from homebound to HHS. Exhibit 157, CPS5-000071.

131 The accommodations and supports included use of a planner for Student to write his assignments. The planner was also used for teachers to communicate with Student and his Parent. T. Vol. III, 551-52 (K. Prude).

132 Student's IEP was current in August 2001, and the District was not required to review his IEP until April 2002, one year after his previous IEP was developed. T. Vol. III, 580-81 (K. Prude).

133 However, because Parent and Student asked for a change in placement, a review of the IEP was necessary. The team reconstituted the April 20, 2001 IEP with the change in placement from homebound to modified regular education on August 28, 2001. T. Vol. III, 580

⁷The Success Center did not have special ed teachers to give the students the extra help when they needed it. T. Vol. VI, 1799-1800 (J. Paulson).

(K. Prude). The IEP Team agreed to meet seven days later on September 5, 2001. Parent received Notice of an IEP conference to be held on September 5, 2001. Exhibit 151, CPS5-000078.

134 Student's IEP Team, including Parent, met on September 5, 2001 to review new information regarding Student so as to draft Student's present level and to work on the other components of the IEP. T. Vol. III, 583-85 (K. Prude).

135 At the September 5, 2001 meeting, Parent provided information to the team regarding the bipolar illness, including an email address for bipolarkids.com. The team discussed side effects of the medication and decided to furnish this information to the teachers and nursing staff. They also looked at Student's Other Health Impaired diagnosis and the team, including Parent, agreed OHI would remain as his educational diagnosis. The team discussed additional supports for Student. Exhibit 131, CPS-000135-136.

136 After the September 5, 2001 meeting, Kelly Prude sent a letter to Student's teachers advising of the accommodations which had been put in place for Student: planner wherein he was to write his assignments. She also stated that a syllabus would be provided to Parent for each class. Additionally, a checklist would need to be filled out for Student. Students's accommodations would be adjusted as Student adapts and adjusts. Exhibit 157, CPS5-000077.

137 The Team did not complete its work on September 5, 2001, but agreed to meet again in six days, September 11, 2001. T. Vol. III, 588 (K. Prude). Notice of IEP conference scheduled for September 11, 2001 was provided to Parent. Exhibit 159, CPS5-000074.

138 Student's IEP Team continued their meeting on September 11, 2001 to review new information. T. Vol. III, 590 (K. Prude). At that meeting the team agreed to meet again

after Student had taken a major test in each class. T. Vol. III, 590 (K. Prude). Parent attended this meeting. Exhibit 161, CPS5-000072.

139 The District furnished the IEP to Student's teachers in September 2001, with some teachers not receiving same until September 17, 2001. Exhibit 148, CPS-000115.

140 At HHS, Student received two hours of academic lab and CWC, class within class instruction in biology and English, in which Student received extensive personal services from trained special educators. T. Vol. III, 546-557 (K. Prude). Student's mathematics class was a self-contained special education class. T. Vol. III, 546-47 (K. Prude).

141 Academic lab is a structured learning environment for Students to work on daily assignments. T. Vol. III, 549 (K. Prude). Academic lab has two full-time teachers as well as University of Missouri Students who are trained to come into the classroom and work with the Students. T. Vol. III, 552 (K. Prude).

142 CWC instruction involves a situation in which a core curriculum class is taught at regular education pace, a learning specialist attends class with a student on an IEP and provides assistance as needed to the student during the class. T. Vol. III, 547 (K. Prude).

143 Student's difficulties at HHS mostly were a result of not completing his work outside of school. His excuses: played on the computer; watched TV, he was out; he lost the assignments. T. Vol. III, 525; 572; 615. (K. Prude).

144 Student was given extensions on homework assignments, part of modifications put in place to assist him. T. Vol. III, 615. (K. Prude).

145 Student admitted to Mrs. Prude that he did not spend a lot of time at home studying for tests. T. Vol. III, 674 (K. Prude).

146 Student had accessible adult mentors at HHS including Mrs. Kelly Prude and Mr. Joe Paulsen. T. Vol. III, 576-77 (K. Prude). Mrs. Prude met Student early on the first day of school to be sure he was able to find his classes and was able to find her if he needed her. T. Vol. III, 575-76 (K. Prude). Mrs. Prude was also with him in his biology class and one of his academic labs. T. Vol. III, 554, 560 (K. Prude).

147 Dr. Farmer testified that the schedule created and the support provided for Student were consistent with her recommendations. T. Vol. IV, 930:10-938:18 (J. Farmer).

148 A majority of Student's teachers wrote weekly reports entitled "Individual Progress Reports" that were made specifically for Student in each of his classes so as to keep Parent updated about Student's progress. Exhibit 163, CPS5-00068; Exhibit 168, CPS5-000471; Exhibit 171, CPS5-00482; Exhibit 175, CPS5-00480; Exhibit 176, CPS5-00484; Exhibit 178, CPS5-000465; Exhibit 181, CPS5-000468; Exhibit 187, CPS5-000507; Exhibit 190, CPS5-000470; Exhibit 191, CPS5-000481; Exhibit 192, CPS5-000466; Exhibit 193, CPS5-000469; Exhibit 196, CPS5-000485. T. Vol. III, 684 (K. Prude).

149 Out of the 300-400 HHS students with IEPs, weekly progress reports are prepared for only 4 of those students. T. Vol. III, 684-685 (K. Prude).

150 The team recognized that it would be important to have open lines of communication between home and school. Mrs. Prude, Student's case manager, gave Parent her unlisted home phone number and her e-mail address in addition to her number at school.⁸ T. Vol. III, 583 (K. Prude).

⁸Another example of Mrs. Prude's extra effort to help Student was her willingness to bring a lawnmower engine from her home for Student to use in his Small Gas Engine Class. T. Vol. III, 559. Prude).

151 Student was meeting 90% of his benchmarks in October 2001. T. Vol. III, 500 (K. Prude).

152 Student's Mid-Quarter Progress Update sent to Parent on September 27, 2001 indicated Student was receiving an A in Life skills and doing well. Exhibit 163, CPS5-000068.

153 Student's grades were low in some classes, primarily due to Student's failure to turn in homework and to perform work outside of the structured school environment. T. Vol. III, 609- 615 (K. Prude).

154 Parent was told that HHS provided free tutoring on Monday through Thursday from 3:00-5:00 p.m. for any student for any subject. Some of Student's teachers offered to stay after school to work with Student. Other teachers offered to give up planning periods to help tutor Student. T. Vol. III, 601 (K. Prude).

155 Parent advised that it would be difficult for Student to stay after school for tutoring because he had to meet with his Juvenile Officer; he had to meet with his therapists; perform community services; AA meetings; group therapy with other kids with mental illness; family therapy; speech and language therapy. T. Vol. III, 638-639 (K. Prude); T. Vol. V. 1244-1245 (A.).

156 Student was not doing well in Small Gas Engines but Mrs. Jewett, the VRE who worked with Student on that class thought he could bring the grade up. T. Vol. VI, 1842 (B. Jewett). However, he failed in September and October to keep at least five appointments with Mrs. Jewett over a six week period. She had several conversations with Student and learned that the Small Gas Engines class was not what he had expected. His interest was in auto body or in adding sound systems to cars. He was not interested in engines. After learning this, the VRE worked with Student to identify any additional preferences and interests and to identify

classes or a course of study, which would allow him to explore those preferences and interests, including taking Student to meet with the culinary teacher after he expressed an interest in cooking. T. Vol. VI, 1822-23 (B. Jewett); Exhibit 170, CPS5-000487-488; T. Vol. III, 570-571. (K. Prude).

157 Student's IEP Team met on November 6, 2001, to discuss goals and benchmarks and to continue working on an IEP for Student. T. Vol. VI, 1715-1716 (J. Paulsen).

158 Parent left the November 6, 2001 meeting. T. Vol. VI, 1715 (J. Paulsen). Student's IEP Team continued to work and developed Student's new IEP. T. Vol. III, 595-96 (K. Prude); T. Vol. VI, 1715-16 (J. Paulsen).

159 Student's November 6, 2001, IEP included a self-management plan, which was developed using data from Student's Functional Behavioral Assessment. T. Vol. III, 596 (K. Prude). The self-management plan provides significant positive reinforcement so he could see how well he was doing and also to determine if there was a pattern to developing problems. T. Vol. V, 1329-30 (R. Trussell).

160 The present level in the November 6, 2001 IEP was developed over the course of the August, September and November meetings using information provided by Parent and Student's teachers. T. Vol. III, 631-32 (K. Prude).

161 At the November 6, 2001 IEP meeting, Student's IEP Team made revisions to Student's transition services, which reflected Student's expressed preferences and interests, including welding classes to accommodate his desire to do autobody work. T. Vol. III, 652 (K. Prude); Exhibit 197, CPS5-000590.

162 Parent did not agree with the IEP created on November 6, 2001. T. Vol. VI, 1715 (J. Paulsen).

163 From November 6, 2001 forward, Parent stopped regularly communicating with Student's teachers. Even when Student's teacher sent an e-mail, expressing concern about Student's comments regarding illegal drugs, Student's Mother's only response was "thank you." Exhibit 206, CPS5-000626.

164 After the November 6, 2001 IEP meeting, Parent insisted that Student be removed from the Small Gas Engines class.

165 Student was hospitalized in November 2001, at Royal Oaks in Windsor, Missouri. According to Parent, Student was hospitalized because of his bipolar condition. T. Vol. II, 484 (A.). The District was advised that Student was hospitalized, but Parent refused to allow the hospital to provide any information to the school. T. Vol. II, 484 (A.); Exhibit 195 (exhibit says "provide no information").

166 When Parent requested a homebound placement in November 2001, Student's IEP team set up a meeting to discuss the appropriateness of such placement. T. Vol. III, 688-89 (K. Prude).

167 The IEP Team agreed to meet again on November 15, 2001. Notice of IEP conference scheduled for November 15, 2001 was provided on November 13, 2001. Exhibit 203, CPS5-000065.

168 Parent attended the November 15, 2001 IEP meeting. Exhibit 205, CPS5-000734.

169 Mr. Paulsen, the LEA representative, arrived at 9:00 a.m. for the scheduled 8:30 November 15, 2001 IEP meeting. Exhibit 205, CPS5-000205.

170 On the day that Student's IEP Team met to discuss Parent's request that Student's placement be changed to homebound, Student was in attendance at school. T. Vol. III 687-88 (K. Prude).

171 At the November 15, 2001 IEP meeting, the Team agreed to change Student's schedule so that he could be removed from small gas engines class, for which he was not penalized grade-wise.⁹ T. Vol. VI, 1828 (B. Jewett).

172 At the November 15, 2001 meeting, the team discussed Parent's request for homebound services. Parent was provided with an application for the psychiatrist to complete, with the understanding that the team would meet again soon to consider the application. T. Vol. III, 688 (K. Prude).

173 Student attended school without Parent's knowledge after the Royal Oaks Hospital released him in November 2001. T. Vol. III, 687 (K. Prude).

174 Parent was provided notice of an IEP conference scheduled on December 13, 2001. Exhibit 239, CPS5-000769.

175 Parent was unable to attend December 13, 2001 meeting, so the meeting was rescheduled for December 21, 2001. Exhibit 239, CPS5-000771.

176 Parent consistently refused to allow any communication between Student's doctors and Student's teachers. Exhibit 211, CPS5-000599. Her refusal continued even after the District offered to pay for the doctor's time to attend the IEP meeting either in person or by conference call. T. Vol. III, 690 (K. Prude).

⁹Ms. Jewett discussed other interests with Student, including cooking. She took him to meet the culinary instructor but Student decided he was not interested in signing up for that class. He also refused to attend any of the other vocational classes which they discussed, including Customer Car Care for which he expressed some interest. He declined a tour of the Career Center. T. Vol. VI, 1823-1824 (B. Jewett).

177 Parent also refused to allow the District access to Student's medical records after this panel issued a subpoena for the production of his records.

178 Because of Parent's refusal to allow the District access to Student's records or his doctors, there is no competent evidence in this hearing to suggest that Student's placement should have been homebound. Furthermore, there is no credible evidence that Student required counseling to access special education services.

179 Overall, Student was successful at HHS. He received passing grades in his first semester at HHS and at the end of his third semester in high school he had an above-average grade point average and was on target to graduate. T. Vol. III, 608, 660 (K. Prude)

180. He was suspended on January 31, 2002 for being under the influence of marijuana and referred to the Juvenile Office. T. Vol. VI, 1787 (J. Paulsen); Exhibit U, Book 11 at 920.

181. His suspension ended in early February when he returned to take a vocational assessment and resume classes. In late February, he stole a car and went to Florida. Thereafter, he came under the jurisdiction of Youth Division Services and has not returned to the District for classes. T. Vol. VI, 1805(J. Paulsen).

CONCLUSIONS OF LAW

The Hearing Panel makes the following Conclusions of Law:

182. The Individuals with Disabilities Education Act ("IDEA"), 20 U. S. C. Section 1400 *et seq.*, the IDEA Regulations, 34 C. F. R. Parts 300-301 and the *State Plan for Part B of the Individuals with Disabilities Education Act* ("State Plan") sets forth the rights of students with disabilities and their parents and regulate the responsibilities of educational

agencies, such as the District and DESE, in providing special education and related services to students with disabilities.

183. The District is and has been, at all times relevant to this due process hearing proceeding, the local educational agency (“LEA”) responsible for providing Student with a free appropriate public education under IDEA.

184. The Three-Member Hearing Panel was validly constituted and has jurisdiction of Student’s claims of violations of IDEA pursuant to 20 U. S. C. Section 1415 (e) (1997) and Section 162.961 RSMo 2000.

185. Student is a “child with a disability” as that term is defined in IDEA in that the parties have agreed that the proper diagnosis is Other Health Impaired to encompass his medical diagnoses of bipolar and post-traumatic stress disorder as well as his ADHD symptoms, which were being seen in school.

186. The purpose of the IDEA and its regulations is: “(1) to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs; (2) to ensure that the rights of children with disabilities and their parents are protected; and (3) to assess and ensure the effectiveness of efforts to educate those children.” 34 C. F. R. Section 300.1.

187. The IDEA and Missouri law require that all students with disabilities between the ages of three and twenty-one years of age have a right to a free appropriate public education (“FAPE”). Missouri State Plan, p. 1.

188. To ensure a disabled child’s right to FAPE, IDEA mandates that an Individualized Educational Program (“IEP”) be developed for each child. Formulation of the IEP must include the following team members:

- (1) The parents of the child;**
- (2) At least one regular education teacher of the child;**
- (3) At least one special education teacher of the child;**
- (4) A representative of the public agency who**
 - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;**
 - (ii) is knowledgeable about the general curriculum; and**
 - (iii) is knowledgeable about the availability of resources of the public agency;**
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above;**
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and**
- (7) If appropriate, the child.**

34 C. F. R. Section 300.344.

189. The IEP must include the following regarding transition services:

- (1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team) and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study . . . ; and**
- (2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.**

34 C. F. R. Section 300.347(b).

190. IDEA mandates that a reevaluation of each student with an IEP is conducted if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years. 34 C. F. R. Sections 300.321 and 300.536(b).

191. To satisfy the requirements of IDEA for the reevaluation process, the IEP team must first review existing evaluation data, including evaluations and information provided by the parents of the child as well as observations by teachers. On the basis of that review, and input from parents, the IEP team must then identify what additional data, are needed to determine: whether the student continues to have a disability; the present levels of performance and educational needs of the student; whether student continues to need special education and whether the student needs additions or modifications to the special education and related services to enable student to meet IEP annual goals. 34 C. F. R. Section 300.533(a).

192. IDEA provides that parents of a student with a disability have the right to request an independent educational evaluation of the student at public expense. 34 C. F. R. Section 300.502.

193. IDEA requires school districts to educate IEP students in the Least Restrictive Environment ("LRE"): "... to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled." 34 C. F. R. Section 300.550(b)(1).

194. The U.S. Supreme Court in *Board of Education v. Rowley*, 458 U. S. 176, 206-207 (1982) established a two-part test for determining whether a child is receiving FAPE: (a) whether IDEA procedures have been followed and (b) whether the IEP developed for the child was "reasonably calculated to enable the child to receive educational benefits." *Id.*

195. The Missouri Court of Appeals, Western District held in *Lagares v. Camdenton R-III School District*, 68 S. W. 2d 518 (Mo. App. 2001) that the Missouri standard of maximizing the capabilities of a disabled student applies in determining whether the student has received FAPE.

196. Under Missouri law, a two year statute of limitations applies to IDEA claims. *Strawn v. Missouri State Board of Education*, 210 F. 3d 954, 957 (8th Cir. 2000). Thus, events which occurred two years prior to requesting due process on November 6, 2001, are time-barred and were not considered other than as general information regarding Student's educational background.

197. For reasons discussed below, the District met the first part of the *Rowley* test: IDEA procedures were followed in the formulation (i.e., notices to Parent, having the proper team members at IEP meetings, addressing transition issues at ages 14 and 16) of the November 30, 1999, April 20, 2001 and the November 6, 2001 IEPs for Student.

198. For reasons discussed below, the District complied with IDEA requirements regarding the reevaluation process for the Student's IEP's April 20, 2001 and November 6, 2001 IEPs for Student.

199. For reasons discussed below, the District developed and implemented the November 30, 1999, April 20, 2001 and November 6, 2001 IEPs so that Student's capabilities were maximized as mandated by the *Lagares* decision.

200. For reasons discussed below, the District satisfied the IDEA requirements for LRE in its placement decisions under the November 30, 1999, April 20, 2001 and November 6, 2001 IEPs for Student.

201. Because no violations of state standards and IDEA occurred, Parent is not entitled to any remedies.

DISCUSSION

Procedural violations of IDEA

As noted earlier in Conclusions of Law # 197, the District followed the procedural requirements of IDEA in formulation of the three IEPs which were the subject of this due process hearing. The District provided advance notice to Parent of IEP meetings.¹⁰ While there may have been an isolated instance or two of a failure to provide written notice to Parent, the District and its personnel commendably worked around the schedule of Parent, especially in view of the extraordinary number of IEP meetings held to prepare three IEPs over a two year period of time. The same comment applies to the provision of a written copy of the procedural safeguards as well as Notices of Action to Parent by the District. With the exception of one IEP meeting where the LEA representative arrived 30 minutes late, the requisite team members attended all IEP meetings.¹¹ Contrary to Parent's argument, IDEA does not dictate the presence of a transition coordinator at IEP meetings.

There were no procedural deficiencies relative to Student's transition needs in any of the IEPs. Beginning at age 14 or younger, if appropriate, a school is required to include a statement, to be updated annually, of the transition service needs of the student that focuses on the student's course of study. Student's November 30, 1999 IEP satisfied this standard. T. Vol. II, 349 (Wright). Student's April 20, 2001 IEP includes a transitional statement that identified Student's interests and addresses future course considerations. Exhibit 132, CPS5-000152. The

¹⁰Stipulation of Facts, paragraphs 10, 16, 17 and 18; Finding of Fact ("FF") #120.

¹¹FF #169.

transition plan is modified over time as Student's preferences and interests change. The November 30, 1999 and April 20, 2001 IEPs showed Student's interest in college preparatory programs. Exhibit 49, CPS5-00250; Exhibit 131, CPS5-000150. The November 6, 2001 IEP identified Student's interests in automobile technology, automobile body repair and indicates post-secondary goals of either college or vocational training. Exhibit 197, CPS5-000590.

The query is under what circumstances will a procedural violation give rise to a denial of FAPE. Not all procedural deficiencies result in a finding of a denial of FAPE. *See e. g., W. G. v. Bd of Trustees of Target Range School District*, 960 F. 2d 1479, 1484 (9th Cir. 1992). The standard to be met for setting aside the IEP is as follows:

if procedural deficiencies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.

Independent School District No. 283 v. S. D. by J. D., 88 F. 3d 556, 562 (8th Cir.1996) (citations omitted).

The procedural violations of the District do not satisfy the test set forth in the *Independent School District* decision and result in a denial of FAPE. The violations were very isolated and *de minimis*.

Substantive Violations of IDEA: Failure to Deliver FAPE

Under the federal law, an IEP is not required to maximize the educational benefit to a child or to provide each and every service and accommodation that could conceivably be of some educational benefit. *Rowley*, 458 U. S. at 199. According to the Supreme Court in *Rowley*, an appropriate educational program is one which is reasonably calculated to enable the child to receive educational benefit. *Rowley*, 458 U. S. at 207. In articulating the standard for FAPE, the *Rowley* Court concluded that Congress did not impose any greater substantive standard

than would be necessary to make such access meaningful. *Id.* at 192. The Court found that Congressional intent was to open the door of public education to handicapped children on appropriate terms rather than to guarantee any particular level of education once inside. *Id.*

According to *Lagares v. Camdenton R-III School District, supra*,¹² Missouri has adopted a higher FAPE standard than what is required by IDEA: maximizing the capabilities of the disabled student. *Id.*, 526. The District's development and implementation of the three IEPs for Student met this higher standard.

November 30, 1999 IEP

¹²While newly adopted legislation may very well negate the holding in *Lagares*, this legislation is not effective until August 28, 2002. Thus, *Lagares* is the applicable standard at the time of the ruling on this due process hearing.

When this IEP was implemented, Student was an eighth grader at West Junior High School. He was placed in modified regular education with no related services provided. The special education services included 250 minutes per week in an academic lab. *FF#32*. The IEP team developed a Behavior Intervention Plan to address discipline problems experienced by Student at West. *FF#37*. Student's learning specialist monitored Student's progress under his IEP and provided a report to Parent on February 2, 2000.¹³ *FF#36 & 46*. Student received low grades during the second semester and was in danger of having to repeat the 8th grade, largely as a result of his failure to turn in homework. *FF#44 & 45*. Student attended summer school and earned sufficient grades to enable him to become a freshman at Douglass High School, an alternative school in the District. *FF#45 & 51*. Student sought to attend Douglass to get a fresh start. *FF#57*.

During this time frame, Student is experiencing behavior problems, primarily outside the classroom. *FF#47 & 68*. Gail Crowley, Student's Case Manager at Douglass, ensured that the teachers followed and implemented the IEP, including the Behavior Implementation Plan. *FF#69*. Douglass and Crowley had very creative reward and time out plans to motivate

¹³This is the only IEP progress report sent to Parent in the second semester 2000. *FF#41*. However, Parent did receive quarterly grade cards, with progress reports provided halfway between each quarter. *FF#42*. See e.g., *Doe By and Through Doe v. Defendant I*, 898 F.2d 1186, 1190 (6th Cir. 1990) (*The Court held that failure of the IEP to contain present educational performance or to include objective criteria in determining whether goals were being met did not invalidate the IEP because parents were aware of Student's most recent grades.*)

students to behave appropriately, to be prepared for class and to work productively. *FF#70-72.*

From November 7-14, 2000. Student was treated at Spirit of St. Louis Hospital for Bipolar-II (Rapid Cycling) Disorder as well as Post Traumatic Disorder, associated with physical abuse. *FF#75-78.* Parent signed a release which enabled Gail Crowley to confer with Student's doctor regarding Student's diagnosis and its implications for his education. *FF# 79-80.*

Because of Student's new diagnosis, the IEP team, including the Parent, agreed to continue with the November 30, 1999 IEP while Student was reevaluated. The team agreed that a new IEP would be developed based upon the Reevaluation. *FF#85-88.* The completed an extensive Reevaluation on March 15, 2001. *FF#92.* The Reevaluation process took many meetings to finish, partly because Parent requested additional tests and also because of rudeness by Parent and advocate. *FF#94 & 95.* The team completed the update of the November 30, 1999 on April 20, 2001. *FF#97.*

The November 30, 1999 IEP as implemented delivered FAPE in the least restrictive environment. His placement was modified regular education, with 250 minutes in academic lab and 1625 minutes in regular education during his attendance at West. *FF#32.* The minutes for the special education services changed when he went to Douglass because he had smaller classes and his Case Manager, who taught two of his classes, was certified as both special and regular education teacher. *FF#69.* This placement satisfied Congress' preference for

educating disabled students in regular classrooms with their peers.¹⁴ *See e.g., Sacramento City School District v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994).

His Case Managers at West and Douglass closely monitored Student's progress in the academic and behavioral areas. *FF# 46 & 69*. His classroom behavior was generally appropriate, with teachers concluding that the Behavior Intervention Plan was successful. *FF#46 & 68*. The District kept Parent informed of his progress and lack of progress in some areas. Student responded by bringing up his grades in summer school so that he passed to the next grade. In *Rowley*, the U. S. Supreme Court noted that receiving passing grades and advancement from one grade to another is one important factor in determining educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U. S. 176, 207 n.28 (1982).

Parent argues that for this IEP (as well as the subsequent ones) the District failed to develop positive behavior plans. The response is two-fold: (1) a parent does not have the right to compel a specific program or methodology, *Gill v. Columbia 93 School District*, 217 F. 3d 1027 (8th Cir. 2000) and (2) the reward systems and time out plan described in *FF#70-72* are highly creative positive plans to improve behavior and academic performance.

April 20, 2001 IEP

As noted previously, this IEP was the annual update to the earlier November 30, 1999 IEP. While there is an argument that the District did not have to reevaluate Student until 2002, the District commendably agreed to Parent's request for a reevaluation in view of

¹⁴Note also that if the procedural mandates of IDEA have been met by a school (as has been found earlier in this opinion), greater deference is to be given to a school's placement decision. *Burlivoch v. Board of Education of Lincoln*, 208 F. 3d 560, 566 (6th Cir. 2000)

Student's psychiatric hospitalization and resulting diagnoses in November 2000. We conclude that the Student received FAPE from the April 20, 2001 IEP as developed and implemented.

The District conducted a thorough evaluation, with considerable input from Parent and her advocate. *FF#94, 95, 97, 104*. The District also agreed to an independent evaluation at public expense, which was performed by Dr. Farmer. *FF#93*. Dr. Farmer agreed with the IEP team's conclusion that Student did not have a learning disability. *FF#114*. Parent is not correct that the IEP team failed to use the information received from Student's doctors and the Spirit of St. Louis Hospital. *FF#99*. The team, including Parent, agreed to a diagnosis of Other Health Impaired to encompass his medical diagnoses of bipolar and post-traumatic stress disorder as well as his ADHD symptoms, which were being seen in school. *FF#105*. After carefully considering behavioral issues, the team agreed that behavior could be adequately handled by addressing it as a goal, i.e., task completion. *FF#106*.

The team concluded that homebound services of ten hours per week was the appropriate placement based on recommendation of Student's doctors and Student's confinement at either JJC or the day treatment at Pathways. *FF#108*. Student was successful in homebound placement receiving two A's and one B. *FF#112*. He also had accumulated sufficient credits to advance to his sophomore year. *FF#112*.

The IEP team reviewed the April 6, 2001 IEP in August 2001 when Student and Parent expressed interest in attending HHS, a traditional high school. *FF#113 & 133*. The team developed sufficient accommodations and supports such as a daily planner, a mentor, two academic labs placed at the beginning and the end of the school day. *FF#130-131,146*. He was also given extensions on time to complete homework assignments. *FF#144*. Dr. Farmer agreed

that the schedule and support provided for Student were consistent with her recommendations. *FF#147*.

While there were some instances where teachers did not follow through with communicating with Parent regarding homework assignments and upcoming tests via the planner or a syllabus, these deficits did not result in a denial of FAPE. One must also be cognizant of the difficulty of balancing a need to monitor Student's work versus giving him a sense of being viewed in an overly negative way. The following exchange with Dr. Farmer underscores the challenge of finding the proper balance:

Dr. Allee: . . . is there a tendency sometimes to do too much for these kids and actually be enabling them to where there's not logical consequences and maybe where in some cases we do things that they're capable of doing for themselves and we send them the wrong message that they're not capable of doing things?

Dr. Farmer: And I would say that would be true for {Student}. Again, the difficulty is knowing in this kind of disorder when to move in and when to step back. It's hard enough when you're the parent of a normally developing child. And you put this kind of psychiatric difficulty on top of it, and it becomes a tremendous strain.

T. Vol. IV, 976.

When Student started at HHS, Student and Parent requested the Success Center which is a two hour class without special education teachers to give students extra help when needed. *FF#125 & 129*. The IEP team determined that the two hours of Academic Lab (with the presence of special education teachers), with one hour at the beginning of the day and the other hour at the end of the day provided appropriate support for Student. A criticism of the District in the implementation of the Academic Lab is the assignment of an A grade by a

teacher who was not one of his Academic Lab teachers. T. Vol. V, 1187-1188 (A.). The District did not offer a valid explanation as to how this sloppiness occurred.¹⁵

Parent and Student also requested a class called Small Gas Engines, in which he was placed. *FF#125*. He had access to B. Jewitt, a VRE who was willing to help Student with this class but Student failed to keep appointments for help. *FF#156*. He also failed to take advantage of free tutoring offered by the District for this class and his other classes. *FF# 154*. Student's grades were low in some classes, primarily due to Student's failure to turn in homework (even with extensions) and to perform work outside of the structured school environment. *FF#144 & 153*. As Dr. Farmer testified, there is a point where a school can put in only so many supports and then responsibility must shift to the student to take advantage of the help offered. *FF#116*. See *Austin Independent School District v. Robert M.*, 168 F. Supp.2d 635 (W. D. Tex.2001) (Court concluded student was not disabled but said even if he met the Other Health Impaired definition under IDEA, student simply needed to commit to doing homework and regularly attending classes.)

Under either the federal standard set out in *Rowley* or the Missouri standard articulated in *Lagares*, Student received FAPE under the April 20, 2001 IEP as developed and as implemented through homebound instruction and at HHS during the first part of the 2001-2002 school year.

November 6, 2001 IEP

In late August-early November, the IEP team continued to review the April 20, 2001 IEP in view of the changes taking place in Student's situation at home and at school as well as

¹⁵Kelly Prude suggested that it was a typo but Hammond's name was circled by hand on the Progress Reports. T. Vol. III, 646 (K. Prude).

the results of the independent evaluation performed by Dr. Farmer. The team developed the present level of Student's educational performance during those meetings. *FF#160*. The team agreed, at the end of the September 11, 2001 meeting, it would be more beneficial to finalize Student's IEP after Student had completed a major test or assignment in each of his classes. T. Vol. III, 589-590 (K. Prude). As decided the team met again on November 6, 2001 to discuss goals and benchmarks and to continue working on a new IEP for Student. T. Vol VI, 1715-1716 (J. Paulsen). Parent left during the meeting but the team continued working and completed a new IEP. *FF#162*. The new IEP included a self-management plan, which was developed from Student's Functional Behavioral Assessment. *FF#159*. When implemented, the plan provided significant positive enforcement so Student could see how well he was doing and also to determine if there was a pattern to developing problems. *FF#159*. Admittedly, there were some instances where the plan did not get completed on a daily basis by all the teachers but the overall results showed the plan was beneficial.

Subsequent to the November 6, 2001 IEP meeting, Parent insisted that Student be removed from the Small Gas Engine class. *FF#164*. The IEP team accommodated that request on November 15, 2001 and Student was not penalized for dropping the class. *FF#171*. At the same meeting, the IEP team discussed Parent's request for homebound services. *FF#172*. She was given an application for the psychiatrist to complete. *FF#172*. The District never received the completed application. Parent refused to cooperate with the District in consenting to a release of the medical records for Student. *FF#176-178*. There also was no competent evidence that homebound placement would have met the LRE requirements of the IDEA.

Overall, Student was successful at Hickman. He received passing grades in his first semester and at the end of his third semester in high school he had an above average grade

point average and was on target to graduate. *FF#179*. This seems especially noteworthy for a Student with an average to low average IQ. *FF#26*.

For the foregoing reasons, the November 6, 2001 IEP as developed and implemented resulted in Student receiving FAPE under both state and federal standards.

DECISION

The District did not violate any provisions of the state standards and IDEA when it developed and/or implemented Student's IEPs dated November 30, 1999, April 20, 2001 and November 6, 2001. Accordingly, Parent is not entitled to any remedies.

The entire hearing panel joins in this Decision without dissent.

APPEAL PROCEDURE

These Findings of Fact, Conclusions of Law, Decision and Order constitute a final decision in this matter. Any party aggrieved by the Decision of the Hearing Panel may, pursuant to Section 536 of the Missouri Revised Statutes, file an appeal to a state court within 30 days of the date of the Decision. An aggrieved party also has the option of pursuing a review of the Decision by the federal courts by filing a Petition within 30 days.